



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221115-0240]

RTID 0648-XC516

Atlantic Surfclam and Ocean Quahog Fisheries; 2023 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs; and Suspension of Atlantic Surfclam Minimum Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2023 will remain status quo. NMFS also suspends the minimum size limit for Atlantic surfclams for the 2023 fishing year. Regulations for these fisheries require NMFS to notify the public of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone even if the previous year's quota specifications remain unchanged. The 2023 quotas were previously announced as projected values. This action confirms the final quotas are unchanged from those projections. This action would not result in harm to these fisheries.

DATES: Effective January 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION: The Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP) requires that NMFS issue notice in the *Federal Register* of the upcoming year's quota, even if the quota remains unchanged from the

previous year. At its June 2022 meeting, the Mid-Atlantic Fishery Management Council recommended no change to the quota specifications for Atlantic surfclams and ocean quahogs for the 2023 fishing year. We are announcing 2023 quota levels of 3.4 million bushels (bu) (181 million L) for Atlantic surfclams, 5.36 million bu (288 million L) for ocean quahogs, and 100,000 Maine bu (3.52 million L) for Maine ocean quahogs. These quotas were published as projected 2023 limits in the *Federal Register* on May 13, 2021 (86 FR 26186). This rule establishes these quotas as unchanged from 2021 and final.

The regulations at 50 CFR 648.75(b)(3) allow the Regional Administrator to annually suspend the minimum size limit for Atlantic surfclams unless discard, catch, and biological sampling data indicate that 30 percent or more of the Atlantic surfclams have a shell length less than 4.75 inches (in) (121 millimeters (mm)) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors. The default minimum size limit is intended to prevent the fishery from harvesting too many small clams that it could harm the overall population. The size limit is unnecessary if small clams are not a significant portion of overall catch. At its June 2022 meeting, the Council reviewed recent developments in the fishery and recommended the Regional Administrator once again suspend the minimum size limit for Atlantic surfclams for the 2023 fishing year. Commercial surfclam data for 2022 indicated that 27.6 percent of the overall commercial landings were composed of surfclams that were less than the 4.75-in (121-mm) default minimum size.

Based on the information available, the Regional Administrator concurs with the Council's recommendation and is suspending the minimum size limit for Atlantic surfclams for the upcoming fishing year (January 1 through December 31, 2023).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the

Atlantic Surfclam and Ocean Quahog FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. This rule is routine and formulaic. The public was given the opportunity to comment on the proposed rule for the 2021-2026 specifications (86 FR 9901, February 17, 2021), including the projected 2023 specifications, which remain unchanged. Delaying this action would prolong public uncertainty about the final quotas for the 2023 fishing year, and could delay issuance of 2023 ITQ cage tags to quota shareholders. The public and industry participants expect this action because we previously alerted the public that we would conduct this review in interim years of the multi-year specifications and announce the final quotas before or as close as possible to the January 1 start of the fishing year. This rule could not be published earlier because of the time necessary to collect data and conduct the analysis to support suspending the minimum size limit for Atlantic surfclams.

This rule is exempt from the requirements of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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